

EXAMINER'S COMMENTS

1. The Office Action mailed on October 6, 2008 is vacated in favor of the below communication. Upon due reconsideration, all pending claims are under examination. The present invention is directed to a gene cluster that encodes many proteins. A search of commercial databases was conducted, however, the three polynucleotides (SEQ ID NOS:1, 2 and 3) were not found together in the art, thus as the DNA escapes the art so does the encoded proteins. Therefore, the claimed invention is novel and non-obvious over the art.

EXAMINER'S AMENDMENT

2. An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.
3. Authorization of this Examiner's amendment was given in a telephone interview with Mr. Chris Eisenschenk on December 15, 2008.
4. The Claims have been amended as follows:
Please **cancel claim 68** without prejudice.

Claim 62 (Currently Amended) A transformed isolated host cell that comprises one or more genetic constructs that comprises SEQ ID NO:1, SEQ ID NO:2 and SEQ ID NO:3, wherein said transformed host cell produces albicidin.

Claim 63 (Currently Amended) The transformed isolated host cell of claim 62 [51] wherein said [one or more] genetic construct contains a combination of SEQ ID NO:1, SEQ ID NO:2 and SEQ ID NO:3.

Claim 64 (Currently Amended) The transformed isolated host cell claim 62 [51] wherein said host cell has been transformed with a first genetic construct comprising SEQ ID NO:1, a second genetic construct comprising SEQ ID NO:2 and a third genetic construct comprising SEQ ID NO:3.

Claim 65 (Currently Amended) A transformed isolated host cell comprising [a] one or more polynucleotides encoding a biosynthetic pathway for albicidin production, said [one or more] polynucleotides encoding SEQ ID NO: 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 39, 40, 41, 42, 43, 44, 45, 46 and 47 and wherein said host cell produces albicidin.

Claim 66 (Currently Amended) A combination of isolated polynucleotides that encodes SEQ ID NO: 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 39, 40, 41, 42, 43, 44, 45, 46 and 47.

Claim 69 (Currently Amended) A method of making an antibiotic comprising [the] culturing [of] a transformed host cell according to claim 65 under conditions that allow for the production of said antibiotic.

5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance".

Conclusion

6. Claims 62-67 and 69-70 are allowable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hope A. Robinson whose telephone number is 571-272-0957.

The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nashaat Nashed, can be reached at (571) 272-0934. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Hope A. Robinson/

Primary Examiner, Art Unit 1652